

DETAILED ACTION

Response to Amendment

1. Claims 4-9 and 11-14 have been amended. Claims 1-14 are pending.
2. The Specification has been amended on 01 September 2006.

Priority

3. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in United Kingdom on 19 May 2005. It is noted, however, that applicant has not filed a certified copy of the United Kingdom application as required by 35 U.S.C. 119(b).

Examiner's Comment

4. Claims 1-14 appear to invoke 35 U.S.C. 112, sixth paragraph, by using the phrase "means to". However, in order to properly invoke 35 U.S.C. 112, sixth paragraph, the Applicant should amend the claimed element to "a means for".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Bradley et al, US 7,211,049 B2 ("Bradley").

Claim 1-14: Bradley teaches a metabolic rate measuring apparatus comprising means to measure a reference metabolic rate of a user from at least one breath of the user (see col. 4, l. 50, to col. 5, l. 12), means to measure metabolic rate from a subsequent breath of a user (see col. 6, ll. 29-34), means to indicate a deviation from the reference rate in a breath and prevent measuring of subsequent breaths (see col. 4, ll. 60-62), and means for a user to override the measurement prevention means to enable measurement of metabolic rate from breaths which deviate from the reference rate (see col. 3, ll. 6-29, and col. 6, ll. 35-43). Claims 2-14 are not critical to Applicant's claimed invention and are not novel over Bradley's disclosure (see entire document).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Navin Natnithithadha/
Patent Examiner, Art Unit 3735
11/25/2007